

SENATE BILL 2683  
By Haynes

AN ACT to amend Tennessee Code Annotated, Title 39, Chapter 14, Part 1, relative to the unlawful operation of an audiovisual recording device.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 39, Chapter 14, Part 1, is amended by adding the following as a new section:

Section 39-14-153.

(a) It is an offense for a person to knowingly operate an audiovisual recording function of a device where a motion picture is being exhibited for the purpose of recording a theatrical motion picture and without the consent of the owner or lessee of such facility and of the licensor of the motion picture being exhibited.

(b) The term "audiovisual recording function" means the capability of a device to record or transmit a motion picture or any part thereof by means of any technology now known or later developed.

(c) An owner or lessee of a facility where a motion picture is being exhibited, or the authorized agent or employee of such owner or lessee, or the licensor of the motion picture being exhibited or his agent or employee or a law enforcement officer who has probable cause to believe that a person has violated this section, may detain such person on or off the premises of the motion picture establishment if such detention is done for any or all of the following purposes:

(1) To question the person, investigate the surrounding circumstances, obtain a statement, or any combination thereof;

(2) To request or verify identification, or both;

(3) To inform a law enforcement officer of the detention of such person, or surrender that person to the custody of a law enforcement officer, or both;

(4) To inform a law enforcement officer, the parent or parents, guardian or other private person charged with the welfare of a minor of the detention and to surrender the minor to the custody of such person; or

(5) To institute criminal proceedings against the person.

(d) Probable cause to suspect that a person has committed or is attempting to commit a violation of this section may be based on, but not limited to:

(1) Personal observation, including observation via closed circuit television or other visual device; or

(2) Report of such personal observation from another patron or employee;

(e) An owner or lessee of a facility where a motion picture is being exhibited, or the authorized agent or employee of such owner or lessee, or the licensor of the motion picture being exhibited or his agent or employee or a law enforcement officer who detains, questions, or causes the arrest of any person suspected of a violation of this section shall not be criminally or civilly liable for any legal action relating to such detention, questioning, or arrest unless the plaintiff shows by clear and convincing evidence that the owner or lessee of a facility where a motion picture is being exhibited, or the authorized agent or employee of such owner or lessee, or the licensor of the motion picture being exhibited or his agent or employee, merchant or merchant's employee or agent or law enforcement officer:

(1) Did not have probable cause to suspect that the person has committed or is attempting to commit a violation of this section;

(2) Acted in a manifestly unreasonable manner under the circumstances; and

(3) Detained the suspected person for an unreasonable period of time.

(f) The owner or lessee of a facility where a motion picture is being exhibited, or the authorized agent or employee of such owner or lessee, or the licensor of the motion picture being exhibited or his agent or employee, may use a reasonable amount of force necessary to protect such owner, agent, employee or licensor, to prevent escape of the person detained, or to prevent the loss or destruction of property.

(g) A reasonable period of time, for the purposes of this section, is a period of time long enough to accomplish the purpose set forth in this section, and shall include any time spent awaiting the arrival of a law enforcement officer or the parents or guardian of a juvenile suspect, if the owner or lessee of a facility where a motion picture is being exhibited, or the authorized agent or employee of such owner or lessee, or the licensor of the motion picture being exhibited or his agent or employee has summoned such law enforcement officer, parents, or guardian.

(h) This section does not prevent any lawfully authorized investigative, law enforcement protection, or intelligence gathering employee or agent, of the state or federal government, from operating any audiovisual recording device in any facility where a motion picture is being exhibited, as part of a lawfully authorized investigative, protective, law enforcement, or intelligence gathering activities.

(i) The provisions of this section shall not apply to a person who operates the audiovisual recording function of a device in a retail establishment for the sole purpose of demonstrating the use and operation of the device for a prospective customer.

(j) For purposes of this section, "facility" shall not be construed to include a personal residence.

(k)

(1) A first violation of this section is a Class A misdemeanor.

(2) A second or subsequent violation of this section is a Class E felony.

(3) Nothing in this section shall be construed as prohibiting prosecution under any other applicable provision of law.

SECTION 2. This act shall take effect July 1, 2004, the public welfare requiring it.